

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-1341V

Filed: September 27, 2019

UNPUBLISHED

MAIA MERIN,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Jimmy A. Zgheib, Zgheib Sayad, P.C., White Plains, NY, for petitioner.

Claudia Barnes Gangi, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On August 31, 2018, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza vaccine received on October 20, 2017. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On August 21, 2019, a ruling on entitlement was issued, finding petitioner entitled to compensation for her SIRVA. On September 26, 2019, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$103,102.25

¹ The undersigned intends to post this decision on the United States Court of Federal Claims' website. **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

(comprised of \$82,500.00 for pain and suffering, \$1,114.38 for past unreimbursable expenses, and \$19,487.87 for lost earnings). Proffer at 1-2. In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$103,102.25** (comprised of \$82,500.00 for pain and suffering, \$1,114.38 for past unreimbursable expenses, and \$19,487.87 for lost earnings) **in the form of a check payable to petitioner, Maia Merin.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

B. Past Unreimbursable Expenses

Respondent proffers that the Court should award Maia Merin a lump sum of \$1,114.38 for past unreimbursable expenses, as provided under 42 U.S.C. § 300aa-15(a)(1)(A). Petitioner agrees.

C. Lost Earnings

The parties agree that based upon the evidence of record, Maia Merin has suffered a past loss of earnings as a result of her vaccine-related injury. Therefore, respondent proffers that the Court should award Maia Merin a lump sum of \$19,487.87 for her lost earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A). Petitioner agrees.

II. Form of Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of \$103,102.25, in the form of a check payable to petitioner, which represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).¹ Petitioner agrees.

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

C. SALVATORE D’ALESSIO
Acting Director
Torts Branch, Civil Division

¹ Should petitioner die prior to the entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering.

CATHARINE E. REEVES
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Torts Branch, Civil Division

ALEXIS B. BABCOCK
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/s/ Claudia B. Gangi
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Dated: September 26, 2019